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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1078

WORLD-WIDE VOLKSWAGEN CORPORATION and SEAWAY VOLKSWAGEN, INC.,

Petitioners,

v.

THE HONORABLE CHARLES S. WOODSON, District Judge of Creek County, State of Oklahoma, KAY ELOISE ROBINSON, EVA MAY ROBINSON, a minor, by and through her father and next friend, HARRY ROBINSON, GEORGE SAMUEL ROBINSON, a minor, by and through his father and next friend, HARRY ROBINSON, and HARRY ROBINSON, individually,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

MIKE BARKLEY
Attorney for Petitioner
World-Wide Volkswagen Corporation
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74103

DAN A. ROGERS
Attorney for Petitioner
Seaway Volkswagen, Inc.
117 East 5th Street
Tulsa, Oklahoma 74103

Of Counsel:

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH & NELSON
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74103

ROGERS, ROGERS & JONES
117 East 5th Street
Tulsa, Oklahoma 74103

HERZFELD & RUBIN, P.C.
Herbert Rubin
Bernard J. Wald
Ian Ceresney
Howard S. Edinburgh
40 Wall Street
New York, New York 10005

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Opinion Below

The opinion of the Oklahoma Supreme Court, not yet reported, appears in the Appendix (1a-6a) to this petition. No opinion was rendered by the lower court, the District Court of Creek County, Oklahoma.

Jurisdiction

On October 10, 1978, the Oklahoma Supreme Court denied petitioners' application for a writ of prohibition and held that the State of Oklahoma may exercise *in personam* jurisdiction over petitioners in this case. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Constitutional Provision and Statute Involved

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution and the Oklahoma "long arm" statute.

Section 1 of the Fourteenth Amendment to the United States Constitution, in pertinent part, provides:

> "No State shall * * * deprive any person of life, liberty or property, without due process of law * * *."

The Oklahoma Statutes, tit. 12, § 1701.03, in pertinent part, provides:

> "(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:
>
> * * *
>
> (4) causing tortious injury in this state by an act or omission outside this state if he * * * derives substantial revenue from goods used or consumed or services rendered, in this state."

Question Presented

Whether the exercise by the State of Oklahoma of personal jurisdiction over a New York retailer and his New

York wholesale supplier is repugnant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution where (1) it is based solely on injury in Oklahoma resulting from the fortuitous transient presence in that state of the retailer's New York customer and the product he purchased in New York and (2) the retailer and the wholesaler neither engaged in any business, economic or other activity in, or directed toward, Oklahoma or Oklahoma residents, nor had any other relationship with Oklahoma or Oklahoma residents.

Statement of the Case

On December 15, 1976, Harry Robinson, a New York resident, purchased an Audi automobile from Seaway Volkswagen, Inc. ("Seaway"), his local Audi dealer in Massena, New York. In Spetember 1977, Mr. Robinson, accompanied by his wife and children, was travelling through Oklahoma, when his car collided with another vehicle. Claiming a defect in the car purchased in New York, the Robinsons initiated a products liability suit in Oklahoma against Seaway and Seaway's supplier, World-Wide Volkswagen Corporation ("World-Wide"), a New York wholesale distributor which sells Audi and other vehicles to local dealers in New York, New Jersey and Connecticut. Also sued were Volkswagen of America, Inc., the importer of the vehicle, and Audi N.S.U. Auto Union Aktiengesellschaft, the German manufacturer of the car.

Neither Seaway nor World-Wide has ever done any business in Oklahoma and neither has ever derived any revenue from economic activities related to Oklahoma. The business activities of Seaway and World-Wide are, by their very nature, confined to their local areas. They do not advertise their products in any national magazine or on any

television or radio network and they do not participate in any advertising fund or pool placing advertisements in or which reach Oklahoma. Oklahoma is simply outside the economic sphere in which Seaway and World-Wide operate.

Completely lacking contacts with Oklahoma, Seaway and World-Wide moved to dismiss the Robinsons' action on the ground that the assumption of jurisdiction over them by the State of Oklahoma in this case would violate the Due Process Clause of the Fourteenth Amendment. Following a denial of their motion by the Oklahoma District Court, Seaway and World-Wide petitioned the Oklahoma Supreme Court for a writ of prohibition to restrain the district court judge, the Hon. Charles S. Woodson, from exercising jurisdiction, again contending that the Due Process Clause precluded Oklahoma from subjecting them to its jurisdiction.*

On October 10, 1978, the Oklahoma Supreme Court denied the writ of prohibition, concluding that personal jurisdiction over petitioners could be exercised under the Oklahoma "long arm" statute, because each of the petitioners "derives substantial revenue from goods used * * * in this State." Okla. Stat., tit. 12, § 1701.03(a)(4). From the use by the Robinsons of their car in Oklahoma, the court believed it was "reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma." (6a).

* Paragraph 11 of petitioners' Application To Assume Original Jurisdiction and Petition for a Writ of Prohibition reads as follows: "Petitioners state that the Respondent Judge is attempting to exercise jurisdiction over these petitioners, even though they do not satisfy the criterion of having any minimal contacts with the State of Oklahoma, and for the respondent Judge to continue to issue orders and exercise jurisdiction over these petitioners is a substantial violation of the due process clause of the Fourteenth Amendment of the United States Constitution, and contrary to the laws of the State of Oklahoma."

Although the opinion recognizes that a determination of long-arm jurisdiction necessitates an inquiry into "whether such exercise of jurisdiction is consistent with the constitutional requirements of due process" (2a), as well as an analysis of state statutory provisions, the opinion never specifically comments on its conclusions with respect to this threshold inquiry. Apparently, the court felt that the constitutional requirements were satisfied by the fact that "the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can forsee its possible use in Oklahoma." (6a).

Reasons for Granting the Writ

A. The Exercise of *In Personam* Jurisdiction by an Oklahoma Court over a Local New York Retailer and his New York Regional Distributor, Based Solely on Injury in Oklahoma as a Result of the Transient Presence in that State of the Retailer's New York Customer and the Product He Purchased in New York, Violates the Due Process Clause of the Fourteenth Amendment.

1. Petitioners Did Not Avail Themselves of the Privilege of Conducting Activities in Oklahoma So As To Invoke the Benefit and Protection of the Laws of Oklahoma.

Before a person can become subject to *in personam* jurisdiction, he must "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945).

> "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protec-

tions of its laws." *Hanson* v. *Denckla,* 357 U.S. 235, 253 (1958); *Kulko* v. *Superior Court,* 98 S.Ct. 1690, 1698 (1978).

This essential element is completely absent in this case.

Neither Seaway nor World-Wide marketed its automobiles in Oklahoma and neither aimed its selling efforts toward Oklahoma residents. Seaway's sales of automobiles were confined to a localized market in Massena, New York. World-Wide's sales of automobiles were limited to local dealers in New York, New Jersey and Connecticut. Petitioners did not receive any economic benefit from the Oklahoma market and consequently did not enjoy any protection of Oklahoma laws. That the accident occurred in Oklahoma was a fortuitous event precipitated by the unilateral, voluntary act of the Robinsons in driving through that state. The Robinsons' post-sale decision to travel through Oklahoma did not result in any monetary or other benefit to Seaway or World-Wide.

Where, as here, there is not even the remotest activity directed to the exploitation of a market in the forum state, and no economic gain by reason of any purposeful activity in that state, *in personam* jurisdiction cannot be constitutionally sustained. To require Seaway and World-Wide to defend in Oklahoma in the absence of such activities is both unfair and unreasonable.

2. Jurisdiction Cannot Be Constitutionally Sustained Solely on the Basis of the Foreseeability of a Possibility that a Purchaser Would Fortuitously Travel through Oklahoma and Be Involved in an Accident.

The finding of the Oklahoma Supreme Court that an Oklahoma accident was a foreseeable consequence of the New York sale by Seaway is a constitutionally impermissible basis for assuming jurisdiction over petitioners.

Without more, foreseeability is not constitutionally equivalent to the fairness test of *International Shoe.*

It is within the realm of foreseeable possibility that a New York purchaser of an automobile from a New York dealer may, one day, travel in that car to another state. Indeed, it is foreseeable that any purchaser of any consumer product may take that product out of the state of purchase. If foreseeability alone were sufficient, then every local seller would become subject to the jurisdiction of every state in which the product he sold happens to be brought by the purchaser.

Foreseeability must be coupled with the requisite "affiliating circumstances" before it is reasonable and fair for a state to subject a person to its jurisdiction. *Hanson* v. *Denckla, supra,* 357 U.S. at 246; *Kulko* v. *Superior Court, supra,* 98 S.Ct. at 1697. These affiliating circumstances are present only where the seller purposefully availed himself of the benefits of the forum state, either through sales in that state or intentional efforts to reach that state's market and generate revenue from sales to its residents.

This case does not concern a manufacturer whose sales or advertising are national in scope. Such a seller might be said to anticipate that his products would enter each state toward which he directed his selling effort and from which he seeks to gain significant economic benefits as a result of his purposeful activities aimed at customers in the state. *See, Eyerly Aircraft Co.* v. *Killian,* 414 F.2d 591 (5th Cir. 1969); *Gray* v. *American Radiator and Standard Sanitary Corp.,* 22 Ill.2d 432, 176 N.E.2d 761 (1961). *cf. Hutson* v. *Fehr Bros., Inc.,* 584 F.2d 833 (8th Cir. 1978). However, where, as here, those circumstances are totally absent, and the forum state is not the focus or target of any purposeful acts by the seller, it becomes unfair and unreasonable, in the

context of our federal system of government, for the seller to be called upon to defend in the forum state.*

B. The Highest Courts of Four Other States, When Presented with the Same Issue, Have Determined that the Exercise of *In Personam* Jurisdiction under the Circumstances of this Case Violates Due Process. Review in this Case Is Required For the Guidance of Both State Courts and Federal Courts in Diversity Cases.

Oliver v. *American Motors Corp.*, 70 Wash.2d 875, 425 P.2d 647 (1967), was a case where, plaintiff, a resident of Oregon, purchased a vehicle from an Oregon dealer. Subsequently, he went on a pleasure trip to the state of Washington, where he was overcome by gaseous fumes emanating from a defective exhaust system. Apart from being the place of the accident. Washington had no relation to the dealer or the purchaser. Under these circumstances, the Supreme Court of Washington held that the exercise of long-arm jurisdiction was unconstitutional, because no inference of minimal contacts with the state was warranted

> "where there is a sale by an out-of-state retailer to his local customer, if nothing further appears by way of a purposeful act on his part or possession of information, which would in any way charge the retailer with knowledge that his transaction might have out-of-state consequences. To attach personal jurisdiction because thereafter the out-of-state purchaser brings the offending mechanism into this state and a tortious consequence occurs is so slender and tenuous a thread on which to hang the implication of submission to our jurisdiction, that in our judgment it does indeed offend 'traditional notions of fair play and substantial justice' within the contemplation of the due process clause." 70 Wash.2d at 889, 425 P.2d at 656.

* *See*, Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. Ill. L.F. 533; Note, *Recent Developments—Jurisdiction: Construction of "Tortious Act" in New York's Long-Arm Statute*, 66 Colum. L.R. 199, 206-208 (1966); Note, *Developments in the Law, State-Court Jurisdiction*, 73 Harv. L. Rev. 909, 928-930 (1953). *cf. Shaffer* v. *Heitner*, 433 U.S. 186, 203-204 (1977).

In *Pellegrini* v. *Sachs & Sons*, 522 P.2d 704 (Utah 1974), the plaintiff, a California resident, purchased an automobile from a local California dealer. After moving to Utah, the purchaser was involved in a collision in that state. The exercise of long-arm jurisdiction by Utah over the California dealer was held unconstitutional.

> "Differing from the manufacturer, a dealer * * * has little or no interest in the sale of similar products in the foreign state. While it is true that he may reasonably expect that the car will go into other states, that does not seem overly important. The counterpoint is that it is also to be expected that most of the products he sells will be used where he is (in California) most of the time; and that even if one does leave, it will likely return, so that in the great preponderance of instances, the discharge of his duties as to the product will be where he is. It is more significant to note that he does not go into the foreign state to take advantage of its business climate or the protection of its laws." 522 P.2d at 707.

Again in *Tilley* v. *Keller Truck & Implement Corp.*, 200 Kan. 641, 438 P.2d 128 (1968), the court refused, on constitutional grounds, to permit jurisdiction over an out-of-state truck dealer who sold the vehicle in Colorado and had no relationship to Kansas, where the accident occurred.

> "[T]here must be something more in 'product hazard' cases than a foreseeable injury from the product to fulfill the minimum contact requirement of due process. If the defendant advertises, solicits or sells its product in the forum state it then has or can anticipate some direct or indirect financial benefit from the sale, trade, use or servicing of its products in the

> forum state. It is then subject to *in personam* jurisdiction. The particular product or service causing the injury need not be sold or performed in the forum state but the defendant must reasonably have or anticipate financial benefit from the sale, trade, use or servicing of its products in the forum state." 200 Kan. at 648, 438 P.2d at 133-134.

In the absence of such advertisement, solicitation or sale, the mere presence of the vehicle in the forum state could not be equated with the derivation of financial benefits from the forum, and jurisdiction could not be sustained. 200 Kan. at 649-650, 438 P.2d at 134.

Similarly, the Supreme Court of Colorado, in *Granite States Volkswagen, Inc.* v. *District Court,* 177 Colo. 42, 492 P.2d 624 (1972), refused, on constitutional grounds, to exercise long-arm jurisdiction over a New Hampshire dealer who sold a car in New Hampshire to a person who subsequently moved to and had an accident in Colorado. Without a showing of any "voluntary action calculated to have an effect" in Colorado, there was no basis for *in personam* jurisdiction over the dealer in Colorado. 177 Colo. at 45, 492 P.2d at 625-626.

The highest courts of the states of Washington, Utah, Kansas and Colorado, on facts virtually identical to those in this case, have thus held that the jurisdiction sustained by the supreme court of Oklahoma in this case is constitutionally impermissible. To permit the Oklahoma decision to remain standing will undoubtedly tend to breed confusion, not only for the courts of other states, but for the federal district and appellate courts as well, which are becoming increasingly involved in product liability diversity cases and are being called upon to determine the permissible scope of state long-arm jurisdiction, often as a matter of first impression. *See, e.g., Hutson* v. *Fehr Bros, Inc., supra,* 584 F.2d 833. A review by this Court is required to provide guidance for the courts which will inevitably be faced in the future with the question raised here.

C. The Decision of the Oklahoma Supreme Court Shatters All Remaining Restrictions on the Personal Jurisdiction of State Courts over Out of State Sellers and Subjects Such Sellers to Possible Suit in Any State Where Goods They Sell Fortuitously Appear.

Petitioners have "no contacts, ties, or relations" (*International Shoe* v. *Washington, supra,* 326 U.S. at 319), with the state of Oklahoma. Application of the Oklahoma long arm statute to Seaway and World-Wide extends state court jurisdiction beyond the constitutional limit and removes any remaining barriers to inhibit Oklahoma, or any state following its example, from exercising *in personam* jurisdiction over any seller whose sole connection with the forum state is the fortuitous circumstance of the product's presence in that state.

Under such a *per se* rule of amenability to suit, every automobile dealer, every retail seller of tires* and, indeed, every retailer or local distributor of consumer products of every nature would be required to defend a suit wherever his products may become involved in an accident.** This would be so despite the complete lack of any contact with the forum state, and the total absence of any economic benefit gained from purposeful activity directed toward the forum state.

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* The burdens imposed upon a local tire retailer who would be amenable to suit in any state where his customer happened to be involved in an accident attributable to the tire is the subject of Judge Sobeloff's often cited hypothetical in *Erlanger Mills* v. *Conoes Fibre Mills, Inc.,* 239 F.2d 502, 507 (4th Cir. 1956).

** *See, Upgreen* v. *Executive Aviation Services, Inc.,* 304 F.Supp. 165, 170-171 (D. Minn. 1969), where the court postulates the possible requirement of a roadside seller of soft drinks in Florida defending a suit in Alaska simply because the Alaskan purchaser bought the bottle in Florida, returned to his home state and gave it to his child, who drank its contents and became ill. Here, where the purchaser was not even a resident of the forum state, the inequity of such a result is even greater.

Conclusion

For all the reasons set forth, this petition for a writ of certiorari should be granted.

Respectfully submitted,

MIKE BARKLEY
Attorney for Petitioner
World-Wide Volkswagen Corporation
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74103

DAN A. ROGERS
Attorney for Petitioner
Seaway Volkswagen, Inc.
117 East 5th Street
Tulsa, Oklahoma 74103

Of Counsel:

HALL, ESTILL, HARDWICK,
GABLE, COLLINGSWORTH & NELSON
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74103

ROGERS, ROGERS & JONES
117 East 5th Street
Tulsa, Oklahoma 74103

HERZFELD & RUBIN, P.C.
Herbert Rubin
Bernard J. Wald
Ian Ceresney
Howard S. Edinburgh
40 Wall Street
New York, New York 10005

Appendix

Opinion of the Supreme Court of the State of Oklahoma

No. 52,478

October 10, 1978

—o—

WORLD-WIDE VOLKSWAGEN CORPORATION and SEAWAY VOLKSWAGEN, INC.,

Petitioners,

vs.

THE HONORABLE CHARLES S. WOODSON, District Judge of Creek County, State of Oklahoma, KAY ELOISE ROBINSON, EVA MAY ROBINSON, a minor, by and through her father and next friend, HARRY ROBINSON, and HARRY ROBINSON, individually,

Respondents.

—o—

ORIGINAL PROCEEDING ON APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF PROHIBITION

* * *

BARNES, J.:

This case concerns an original action brought on behalf of World-Wide Volkswagen Corporation and Seaway Volkswagen, Inc., in which the petitioners ask this Court to assume original jurisdiction and issue a writ of prohibition, prohibiting the respondent trial judge, the Honorable Charles S. Woodson, from exercising personal jurisdiction over the petitioners, through service under the Uniform Interstate and International Procedure Act, as adopted in Oklahoma at 12 O.S. 1971, §§ 1701.01 et seq., commonly referred to as the Oklahoma Long-Arm Statute.

The test for applying Long-Arm jurisdiction in Oklahoma is to determine whether the exercise of jurisdiction is authorized by statute, and, if so, whether such exercise of jurisdiction is consistent with the constitutional requirements of due process.[1]

After examining Oklahoma's Long-Arm Statute and the facts present in this case, we conclude that jurisdiction over the non-resident petitioners is authorized by statute.

The facts before us in this case are as follows: In September of 1977, an Audi automobile, driven by Kay Eloise Robinson, was struck in the rear by an automobile being driven by a party not involved in the case before us. Mrs. Robinson and her two children, Eva May and George Samuel, were seriously injured in that collision when the gasoline tank of their Audi automobile ruptured, causing a fire in the passenger compartment of that car. As a result of that collision, manufacturers products liability actions were brought on behalf of Mrs. Robinson, her husband and her children against (1) the manufacturer of the automobile, Volkswagenwerk Aktiengesellschaft; (2) against the U.S. importer of the automobile, Volkswagen of America, Inc.; (3) against the distributor of the automobile, World-Wide Volkswagen Corporation; and (4) against the retail dealer who sold the Robinsons the car, Seaway Volkswagen, Inc.

It is World-Wide Volkswagen, distributor of Audis in Connecticut, New York and New Jersey, and Seaway Volkswagen, Inc., the dealer who sold the car, that petition this Court seeking a writ of prohibition.

In Oklahoma, jurisdiction over nonresident defendants cannot be inferred, but must affirmatively appear from the

[1] See *Timberlake* v. *Summers*, 413 Fed. Supp. 708 (D. C. Okla. 1976).

record.[2] When a jurisdictional question arises, the burden of proof is upon the party asserting that jurisdiction exists.[3]

In the case before us, the respondents contend that the courts of Oklahoma have jurisdiction over the petitioners because they caused a tortious injury in this State, giving rise to jurisdiction under the provisions of 12 O.S. 1971, § 1701.03(a) (3) or (4).

Title 12 O.S. 1971, § 1701.03, provides in part:

> "(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:
>
> "(1) • • •
>
> "(2) • • •
>
> "(3) causing tortious injury in this state *by an act or omission in this state;*
>
> "(4) causing tortious injury in this state *by an act or omission outside* this state *if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;* • • •." (Emphasis added)

While it is true that the alleged acts or omissions of the petitioners allegedly caused tortious injury in this State, none of the acts or omissions alleged took place in this State. The defects in the product allegedly existed at the time the product left the hands of the petitioners, and at that time the automobile was not, and had not been, in

[2] *Roberts* v. *Jack Richards Aircraft Co.*, 536 P.2d 353 (Okl. 1975), and *Crescent Corp.* v. *Martin*, 443 P.2d 111 (Okl. 1968).

[3] *Roberts* v. *Jack Richards Aircraft Co.*, 536 P.2d 353 (Okl. 1975).

the State of Oklahoma. We therefore conclude that no acts or omissions on the part of the petitioners took place within the State. In attempting to convince us that acts or omissions of the petitioners did take place within the State, the respondents rely upon *Gray* v. *American Radiator & Standard Sanitary Corp.*, 176 N.E.2d (Ill. 1961).

We do not find the analysis used in *Gray* v. *American Radiator, supra,* persuasive. In that case, the Illinois Supreme Court was interpreting a provision of the Illinois Revised Statutes which provided that a nonresident, who either in person or through an agent *commits a tortious act within Illinois,* submits to the jurisdiction of Illinois, and may be served by means of the State Long-Arm Statute. In determining whether the manufacturer of a defective safety valve, which was allegedly defective at the time of manufacture in Ohio, committed a "tortious act" in the State of Illinois, the Court held that a tort had been committed within the jurisdiction because the injury which resulted from the defect occurred in Illinois. In so ruling, the Court held that the place of a wrong is where the last event necessary to render the actor liable takes place, and that the last act to render the manufacturer liable was the sustaining of an injury in Illinois by the plaintiff.

Our statute is *unlike* the Illinois statute. The Illinois statute merely requires that a tortious act be committed within Illinois. The Illinois court ruling makes a party subject to Illinois jurisdiction if his acts ultimately result in tortious injury within Illinois. Our statute requires more than the occurrence of tortious injury within the State before a party is subject to personal jurisdiction. Under the provisions of subsection (a) (3) of 12 O.S. 1971, § 1701.03, a person is subject to personal jurisdiction in Oklahoma if he causes tortious injury in the State "by an act or omission in this State." It is not possible to interpret the provisions of subsection (a) (3) of Section 1701.03 in the same way in which Illinois interpreted its statute, as such an interpretation would be inconsistent with subsection (a) (4) of the same section, which specifically sets forth the prerequisites for in personam jurisdiction in situations in which tortious injury in this State is caused by acts or omissions outside the State.

If we were to follow Illinois' rationale, and hold that the mere occurrence of a tortious injury in this State constituted an act or omission in the State, there would be, under that interpretation, no such thing as tortious injury within the State *caused by acts or omissions outside the State.* Such an interpretation would be totally inconsistent with the provisions of subsection (a) (4), which specifically deal with situations in which tortious injury within the State is caused by acts or omissions outside the State. That subsection provides that in such situations, particular contacts with the State are necessary in order to confer jurisdiction over out-of-State tort feasors.

Because our statute required more contact with the State than the Illinois statute, we are not persuaded by the Illinois court's rationale in *Gray* v. *American Radiator, supra.* Accordingly, we hold that the acts or omissions of the petitioners, which are alleged in the petition, were not acts or omissions in this State, and therefore no power to exercise personal jurisdiction over the petitioners existed by virtue of the provisions of 12 O.S. 1971, § 1701.03 (a)(3).

We next consider whether the power to exercise personal jurisdiction over the petitioners existed by virtue of 12 O.S. 1971, § 1701.03(a)(4). Under the provisions of subsection (a)(4) of 12 O.S. 1971, § 1701.03, more is required than the mere occurrence of tortious injury in this State. Under the provisions of that subsection, a party causing tortious injury in this State by acts or omissions outside the State is subject to the exercise of personal jurisdiction of this State, if *"he regularly does or solicits business or engages in any*

other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state.''

In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. This is especially true of the distributor, who has the exclusive right to distribute such automobile in New York, New Jersey and Connecticut. The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justified in concluding that the petitioners derive substantial revenue from goods used or consumed in this State.

Because the trial court was justified in concluding that the petitioners derived substantial revenue from goods used within the State, and because alleged acts or omissions on the part of petitioners outside the State allegedly caused tortious injury in this State, we hold that the trial court had the power, pursuant to 12 O.S. 1971, § 1701.03(a)(4), to exercise personal jurisdiction over the petitioners. As the trial court had such power, we refuse to issue a writ of prohibition.

ORIGINAL JURISDICTION ASSUMED AND ORIGINAL PROHIBITION DENIED.

HODGES, C. J., LAVENDER, V. C. J., and WILLIAMS and DOOLIN, JJ., concur.

BERRY and SIMMS, JJ., concur in result.

IRWIN, J., concurs in part and dissents in part.